The case is of interest to American readers because the provisions in the Australian Constitution are sufficiently similar to those on which the war powers of our Congress depend, so that the case may be thought a persuasive authority upon the question of the validity of our Food Control Act of August 10, 1917. Indeed, the words of the Australian provision seem rather less broad than the language in our own Constitution. *Cf. United States v. Casey,* noted *supra.*

CONTRACTS—CONSTRUCTION—AMERICAN WATERS AS "WAR REGION."—A ship was chartered under an agreement providing that if the charterers should order her to trade "in the war region," war risk insurance premiums paid by the owners should be refunded to them by the charterers. The ship was trading between Sydney (C. B.), Halifax and Boston when a number of vessels were sunk in one day by a German submarine near Nantucket Lightship. There were no further sinkings in American waters and the submarine was not again reported, but premiums on insurance in these waters were for a time greatly increased. Two days after the sinkings the owners effected war risk insurance at the increased premium, and suit was brought against the charterers to recover the premium so paid. *Held* (the Lord Chancellor dissenting), that the "war region," for the purposes of the agreement in question, must be held to include any waters where for the time being warlike operations were being conducted or were reasonably to be apprehended, or (*per* Lord Dunedin) where the war affected the risk that ships would run; that the plaintiffs had acted reasonably; and that they were entitled to recover the premiums paid. *Dominion Coal Co. v. Maskinonge S. S. Co.* (1918, H. of L.) 118 L. T. Rep. N. S. 115.

The case has, perhaps, more news interest than legal importance. Considering all the circumstances and the apparent object of the provision in question, the construction adopted seems a reasonable one.

CONTRACTS—TRUSTS—THIRD PARTY BENEFICIARY—SUIT BY DONEE-BENEFICIARY.—Land was conveyed by A. to her mother, E., on the latter's promise to A. that she would pay to A.'s daughter, the plaintiff, a certain sum of money that had been invested in the land by A.'s husband, in case E. should ever sell the land or should die without selling it. E. died without having performed her promise. *Held,* that the plaintiff has a valid claim against E.'s executor for the promised amount. *In re Edmundson's Estate* (1918, Pa.) 103 Atl. 277.

In this case the plaintiff was the sole beneficiary of the contract and was a mere donee. She was the daughter of the promisee, but the court rightly makes no reference to this fact. *Cf. Seaver v. Ransom* (1917, App. Div.) 168 N. Y. Supp. 454, discussed in 27 YALE LAW JOURNAL, 563. In the present case the promisor received property, but not as a trustee. The contract created an ordinary conditional debt in favor of a third person.

COURTS-MARTIAL—PERSONS SUBJECT TO MILITARY LAW—PASSENGER ON ARMY TRANSPORT.—A passenger on an army transport returning from France volunteered to stand watch and did so for several days, but finally refused to continue, although ordered so to do by the army officer in charge of the vessel. For disobedience of this order he was sentenced by a court-martial to five years' imprisonment. He applied for a writ of *habeas corpus* to obtain his release from imprisonment. *Held,* that the petitioner was not entitled to be released, since he was subject to the jurisdiction of the court-martial as a person "accompanying or serving with the armies of the United States in the field." *Ex parte Gerlach* (1917, S. D. N. Y.) 247 Fed. 616.

Prior to the enactment of the present Articles of War two classes of civilians were subject to military discipline in time of war: (a) "retainers to the camp"

and (b) "persons serving with the armies of the United States in the field." See 1 Winthrop, *Mil. Law*, 117 *et seq.* Article 2 of the present Articles of War (Act of Aug. 29, 1916, Comp. St. 1916, sec. 2308a) has added a third class, namely, "persons accompanying the armies of the United States." The principal case is the first, so far as discovered, to place a judicial construction upon this language. Judge A. N. Hand states in the opinion: "The captain in charge of the vessel had, in my opinion, the right to call upon all persons on board to protect the transport in any way that seemed best in view of the danger. The section of the Articles of War subjecting persons accompanying armies to military authority not only enables military officers to preserve order on the part of such persons, but also in the cases that it covers to call on them for assistance and direct their action while they are properly in the field of military operations."

CRIMINAL PROCEDURE—AMENDMENTS—EFFECT OF CLERICAL ERROR IN INDICTMENT.—An indictment found on February 8, 1915, charged the defendant with having committed the criminal acts in question on October 17, 1915, i. e. subsequent to the finding of the indictment. The trial court permitted the prosecution to amend the indictment so as to change 1915 to 1914. From a decision of the New York Appellate Division affirming this decision, the defendant appealed. *Held* (two justices dissenting), that the defect in the indictment was one of substance which could not be cured by amendment. *People v. Van Every* (1917, N. Y.) 118 N. E. 244.

The decision is put on the ground that, although the precise time at which the crime was committed need not be stated in an indictment and the New York statute permits indictments to be amended on just terms at the trial in order to correct variances between proof and allegations, nevertheless the indictment in question was invalid from the beginning and to allow an amendment would be to permit the trial court to usurp the functions of the grand jury. In taking this view the court seems clearly to be following the precedents in New York and other states. It seems equally clear that in some way our system of criminal procedure ought to be so amended as to permit of the correction without re-indictment of what was obviously a mere clerical error. Probably that could best be done in connection with a general reform and simplification of the forms of indictments.

INSURANCE (MARINE)—WHETHER INSURANCE AGAINST "MEN-OF-WAR" COVERS ABANDONMENT OF VOYAGE FROM REASONABLE FEAR OF CAPTURE.—Goods in transit by a German ship from Calcutta to Hamburg were insured by English owners in June, 1914, against various perils, including "men-of-war . . . enemies . . . takings at sea, arrests, restraints, and detainments of all kings, princes, and people of what nation, condition and quality soever." War broke out between Great Britain and France on one side and Germany on the other while the vessel was at sea, and the captain put into Messina, then a neutral port, to avoid the risk of capture by British or French cruisers then in the Mediterranean. He later moved the ship to Syracuse, and declared the voyage abandoned. The owners of the cargo sued the insurer, claiming a constructive total loss by a peril insured against. The ship was at no time pursued by any hostile cruiser, nor was any actually sighted. It appeared by a statement from the British Admiralty that a German steamer proceeding through the Mediterranean at the time in question would have been "in peril of capture by British or allied warships." *Held,* that the frustation of the adventure was due, not to the peril insured against, but to something done to avoid that peril, and that the insurer was not liable. *Becker, Gray & Co. v. London Assurance Corp.* (1917, H. of L.) 117 L. T. Rep. N. S. 609.